

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RICKY RAYMOND, et al.,	§	
Plaintiffs,	§	
	§	
vs.	§	CIVIL ACTION NO. H-05-4149
	§	
UNIVERSITY OF HOUSTON	§	
Defendant.	§	

PLAINTIFF’S OPPOSED MOTION FOR JURY TRIAL

TO THE HONORABLE NANCY K. JOHNSON, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Plaintiff, Virginia Lara, who files this Opposed Motion for Jury Trial on all issues pursuant to FED. R. CIV. P. 39(b), and respectfully shows the Court as follows:

I. INTRODUCTION

Plaintiff seeks a trial by jury on all issues. Since the deadline for a jury demand made under the provisions of FED. R. CIV. P. 38 has passed, this motion is brought pursuant to FED. R. CIV. P. 39(b).

II. ARGUMENT AND AUTHORITIES

For reasons unknown to Plaintiff, Plaintiff’s first lawyer (now deceased) did not demand a jury trial under the provisions of FED. R. CIV. P. 38 when this case was initially filed. *See* Docket Entry 1. Until Plaintiff met with the undersigned counsel and was informed otherwise, Plaintiff’s lay and understandable misperception was that this case would be conducted and tried before a jury rather than the bench. *See* Exhibit 1 to this motion.

On December 28, 2006, Plaintiff’s first lawyer consented to proceed before United States Magistrate Judge Nancy K. Johnson. *See* Docket Entry 24. Before meeting with the undersigned

counsel, Plaintiff was never provided with a copy of this document or consulted prior to her first lawyer's approval of the same. *See* Exhibit 1 to this motion.

In the Fifth Circuit, district courts are directed to grant a jury trial in the absence of "strong and compelling reasons to the contrary." *Daniel Int'l v. Fischbach & Moore, Inc.*, 916 F.2d 1061, 1064 (5th Cir. 1990). A motion for trial by jury "should be favorably received unless there are persuasive reasons to deny it." *Id.*; *see* 9 Wright & Miller § 2334 ("technical insistence upon imposing a penalty for failing to follow the demand procedure by denying a jury trial is not in the spirit of the Federal Rules").

In this case, there are no persuasive or compelling reasons to deny Plaintiff's request for a jury to consider her case. Additionally, while Defendant may not have anticipated this motion, it cannot be reasonably argued that Defendant has been *unfairly* surprised by this motion. Because the pre-trial conference has not been conducted yet, granting the motion should not result in the disruption of anyone's schedule for this case.

WHEREAS, ABOVE PREMISES CONSIDERED, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Jury Trial on all issues under the provisions of FED. R. CIV. P. 39(b), and to all other relief to which Plaintiff may be justly entitled.

Respectfully Submitted,

TERRY & THWEATT, P.C.

By: /s/ L. Lee Thweatt
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all counsel of record via the Court's electronic filing system on December 28, 2009.

By: /s/ L. Lee Thweatt

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(D), prior to the filing of this motion, I have conferred with opposing counsel. Opposing counsel is opposed to the relief sought in this motion.

By: /s/ L. Lee Thweatt